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IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1958

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No. ~~11~~ Original

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,
Defendants.

ANSWER OF THE STATE OF MISSISSIPPI TO THE MOTION OF THE UNITED STATES FOR JUDGMENT; MOTION FOR LEAVE TO TAKE EVIDENCE; AND STATEMENT IN SUPPORT OF ANSWER AND MOTION

JOE T. PATTERSON
Attorney General of Mississippi
New Capitol Building
Jackson, Mississippi

JOHN H. PRICE, JR.
Assistant Attorney General
New Capitol Building
Jackson, Mississippi

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UNITED STATES OF AMERICA,
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STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,
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ANSWER OF THE STATE OF MISSISSIPPI TO THE MOTION OF THE UNITED STATES FOR JUDGMENT

In response to the Motion of the United States for Judgment as to the Third Cause of Action (against the State of Mississippi), the State of Mississippi says:

The Motion of the United States for Judgment should be denied. The Submerged Lands Act (67 Stat. 29) released and relinquished to each Gulf Coastal State an area extending seaward to its boundary as it existed at the time the State became a member of the Union, or as approved by Congress prior to the passage of said Act, not to exceed three marine leagues into the Gulf of Mexico. The Act of Congress admitting Mississippi as a state into the Union on December 10, 1817 (3 Stat. 472) established its seaward boundary at six leagues from shore into the Gulf of Mexico when it fixed the

boundaries of said state by reference to the Enabling Act of March 1, 1817 (3 Stat. 348), as follows:

> "That the said state shall consist of *all the territory included within the following boundaries,* to-wit: beginning on the river Mississippi at the point where the southern boundary line of the state of Tennessee strikes the same, thence east along the said boundary line to the Tennessee river, thence up the same to the mouth of Bear creek, thence by a direct line to the north-west corner of the county of Washington, thence due south to the Gulf of Mexico, thence westwardly, *including all the islands within six leagues of the shore,* to the most eastern junction of Pearl River with Lake Borgne, thence up said river to the thirty-first degree of north latitude, thence west along the said degree of latitude to the Mississippi river, thence up the same to the beginning." (Emphasis supplied)

The original Constitution of the State of Mississippi, adopted in the year 1817, prior to its admission as a state into the Union, likewise defined Mississippi's seaward boundary as being six leagues from shore into the Gulf of Mexico. The existence of this boundary prior to and at the time Mississippi became a member of the Union requires that the motion of the United States for judgment against the State of Mississippi be denied as a matter of law. However, if the judgment against the State of Mississippi should not be denied as a matter of law for this reason, then it should be denied because any attack made by the United States on the validity of said boundary would involve genuine issues as to material facts, such as the understanding

and meaning of documents, diplomatic correspondence, usage, contemporary construction, and the like. A full hearing should be granted and evidence taken. In *United States vs. Texas*, 339 U. S. 707, 715, this Honorable Court stated:

> "The Court in original actions, passing as it does on controversies between sovereigns which involve issues of high public importance, has always been liberal in allowing full development of the facts . . . If there were a dispute as to the meaning of documents and the answer was to be found in diplomatic correspondence, contemporary construction, usage, international law and the like, introduction of evidence and a full hearing would be essential."

WHEREFORE, the State of Mississippi prays that the Motion of the United States for Judgment be denied.

JOE T. PATTERSON
Attorney General of Mississippi

JOHN H. PRICE, JR.
Assistant Attorney General

February, 1958

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STATES OF LOUISIANA, TEXAS, MISSISSIPPI, ALABAMA and FLORIDA,
Defendants.

MOTION FOR LEAVE TO TAKE EVIDENCE

If the Motion of the United States for Judgment is not denied as a matter of law, for the reasons stated in the Answer of the State of Mississippi to said motion, the State of Mississippi moves for leave to take evidence by such means as the Court may deem most appropriate and convenient.

JOE T. PATTERSON
Attorney General of Mississippi

JOHN H. PRICE, JR.
Assistant Attorney General

February, 1958

STATEMENT

The Motion of the United States Should Be Denied as a Matter of Law

The Submerged Lands Act (67 Stat. 29) released and relinquished to the several Gulf Coastal States an area extending to their respective seaward boundaries as they existed at the time each state became a member of the Union, or as approved by Congress prior to the passage of said Act, not to exceed three marine leagues into the Gulf of Mexico. By the original Constitution of the State of Mississippi, adopted in the year 1817, prior to its admission as a state into the Union, and by the act of Congress admitting Mississippi as a state into the Union on December 10, 1817 (3 Stat. 472), the seaward boundary of the State of Mississippi was established at six leagues from shore into the Gulf of Mexico. Hence, it is apparent that the property released and relinquished to the State of Mississippi under said Submerged Lands Act extends three marine leagues into the Gulf of Mexico since Mississippi's historic boundary extends even beyond said three marine league line.

Since the Submerged Lands Act was enacted by Congress and approved by the President, this statute represents the joint action of both political branches of the government. The Congress, with the approval of the President, has the right in its discretion to dispose of any property of the United States, and the exercise of this discretion and the fixing of the limits of this disposition of the property of the United States are political matters. *Alabama vs. Texas,* 347 U. S. 272. As a matter of law, the motion of the United States for judgment should be denied.

Necessity for Presenting Evidence

If the motion of the United States for judgment is not denied as a matter of law for the reasons stated above, then the motion should be denied because the contentions of the United States must necessarily involve material issues of fact, in so far as the United States seeks to impair or destroy the validity of the seaward boundary of Mississippi as it existed at the time it became a member of the Union.

In *United States vs. Texas,* 339 U. S. 707, 715, this Court, with reference to the plea of Texas to be heard on the facts, stated:

> "The Court in original actions, passing as it does on controversies between sovereigns which involve issues of high public importance, has always been liberal in allowing full development of the facts . . . If there were a dispute as to the meaning of documents and the answer was to be found in diplomatic correspondence, contemporary construction, usage, international law and the like, introduction of evidence and a full hearing would be essential."

Unlike in *United States vs. Texas,* supra, where the seaward boundary of Texas was assumed to exist at three marine leagues but that fact was held to be immaterial to the issues then before the Court, the location of the seaward boundary of the State of Mississippi is a main issue in the present case. Moreover, the meaning and effect of Mississippi's seaward boundary description, as defined in Mississippi's Constitution of 1817 and also in the Act of Congress admitting Mississippi as a state into the Union on December 10, 1817

(3 Stat. 472), among other documents, may be disputed by the United States. If such an issue of fact is thus raised, it will be necessary to resort to diplomatic correspondence, contemporary construction, usage and the like in order to adequately answer the questions raised, thereby rendering essential the introduction of evidence and a full hearing for the proper determination of the issues.

We believe and respectfully contend that the issues herein are wholly internal matters and that international law has no application whatsoever and is entirely irrelevant to these proceedings. However, should the United States attempt to predicate its case, or any part thereof, upon principles of international law, and should this Honorable Court consider that international law has some bearing on the issues presented herein, we respectfully submit that much of the source material upon which conclusions within the realm of international law are based is found in documents of which this Court probably has not taken judicial notice, such as letters, speeches, and unpublished diplomatic correspondence now in the files of foreign state departments, some of which documents would be necessary to the proper and complete defense of this case.

Moreover, should this Court deem international law pertinent to the issues herein, the State of Mississippi particularly desires to offer the testimony of experts in the field of international law upon the question of the legal significance and effect of the boundary provision contained in Mississippi's Constitution of 1817, adopted prior to its admission as a state into the Union, the provision of the Act of Congress admitting Mississippi as a state into the Union (3 Stat. 472) regarding

boundaries, and the boundary provisions of the Constitutions subsequently adopted by the State of Mississippi, all of which provisions establish Mississippi's southern boundary line at six leagues from shore into the Gulf of Mexico. Also, in the event international law is deemed to be relevant, the State of Mississippi desires to offer the testimony of experts concerning the present state of international law relating to the area in controversy.

The question of whether Mississippi should be permitted to present the evidence above mentioned, as well as the manner of presentation of this evidence, should be determined as a preliminary matter.

Time for Filing Brief

We anticipate that the time suggested by the United States for the filing of a reply brief by Mississippi will be insufficient. We would prefer that the Court defer setting the time for the filing of a reply brief until after the United States has filed its brief, when Mississippi will be in a better position to suggest the length of time which will be required to prepare and file its reply.

Mississippi has no wish to delay an expeditious determination of this case so long as that can be achieved consistent with a reasonable time for Mississippi to assemble, digest, select, and present its proof and legal authorities. But, from the very nature of the issues involved, the proof and authorities in response to the anticipated claims of the United States cannot be assembled, sorted, and condensed for orderly presentation to this Court within the time limits suggested by the United States. If an order is to be entered now, Mississippi suggests that at least one hun-

dred twenty (120) days after receipt of the brief of the United States will be needed for the filing of her reply brief.

Time for Oral Argument

Finally, we consider it premature to fix the time for oral argument pending the formation of issues and the determination of the necessity for and the extent of evidentiary material and the manner of its presentation.

Respectfully submitted,

JOE T. PATTERSON
Attorney General of Mississippi

JOHN H. PRICE, JR.
Assistant Attorney General

February, 1958

PROOF OF SERVICE

I, Joe T. Patterson, Attorney General of the State of Mississippi, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the _____ day of February, 1958, I served copies of the foregoing pleadings and statement on the several parties to said cause as follows:

(1) On the United States, by mailing copies in duly addressed envelopes, with air mail postage prepaid, to the Attorney General and the Solicitor General of the United States, respectively, at the Department of Justice Building, Washington 25, D. C., and

(2) On the States of Texas, Louisiana, Alabama and Florida, by mailing copies in duly addressed envelopes, with air mail postage prepaid, to their respective Attorneys General at their respective addresses as follows: Capitol Building, Austin, Texas; Capitol Building, Baton Rouge, Louisiana; Judicial Building, Montgomery, Alabama; and Capitol Building, Tallahassee, Florida.

JOE T. PATTERSON
Attorney General of Mississippi